



August 29, 2013

Mr. Tyler Bintrim  
United States Army Corps of Engineers  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222

Dear Mr. Bintrim:

Subject: Response to USACE July 11, 2013 Comment Letter  
Proposed Century Mine Coarse Refuse Disposal Area  
Wayne Township, Belmont County, OH  
CEC Project 120-050

On behalf of American Energy Corporation, Inc. (AEC), Civil & Environmental Consultants, Inc. (CEC) has prepared the following responses to comments provided in the U.S. Army Corps of Engineers (USACE) letter dated July 11, 2013. This response letter is in reference to AEC's proposed expansion of the Coarse Refuse Disposal Area (CRDA) D-0425-8 located in Wayne Township, Belmont County, Ohio. A total of 3,223 linear feet of ephemeral and intermittent streams are proposed to be filled as a result of the proposed expansion. No wetlands or perennial streams will be impacted by the project.

For clarity, comments from the July 11, 2013 USACE letter are provided below in bold type followed by our responses. The USACE letter also included comments received as a result of the Public Notice along with additional comments from the U.S. Environmental Protection Agency (USEPA). Responses to the public comments and USEPA comments follow the USACE responses.

#### **USACE July 11, 2013 Comment Letter**

**Comment 1. The application suggests that the proposed course refuse disposal area will contain 5.2 million cubic yards of course refuse in the proposed valley fill. Nowhere in the application is the life of the Century Mine referenced. What is the life of the Century Mine and will this coarse refuse disposal area provide enough disposal to serve the life of mine? Where and how will the fines associated with mining be disposed of?**

RESPONSE: There are sufficient reserves at AEC to have a significant mine life. However, the determination of the mine life is based upon coal market conditions that, at this time, are not known and cannot be stated with certainty. The proposed expansion will provide AEC with the ability to store approximately 5.2 million cubic

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yards of material that is vital to the continued operation of the coal mine. Fines associated with mining will continue to be disposed of at The Ohio Valley Coal Company's No. 2 impoundment.

AEC has submitted an application for a single and complete project. The life of mine is not a required determinant for the Section 401 or Section 404 application process, and should not affect the decisions associated with issuance of this permit. The OEPA has issued numerous Section 401 permits for stream impacts associated mine refuse disposal area expansions. As far as we know, those applicants were not required to define the permanent "life of mine" scenario for their projects nor were their permits conditioned upon ceasing mine operations following "life of mine" predictions.

**Comment 2. The application references that 3,223 linear feet of intermittent and ephemeral streams will be restored to pre-mining contours and conditions. Please clarify.**

RESPONSE: This was a typographical error. The proposed area of impact will have a final site layout that will not mimic existing conditions.

**Comment 3. The mitigation plan suggests that a 70% woody vegetation survival rate after 3 years will be expected. Please note that in the event of a positive permit decision 80% survivorship of woody vegetation will be required after 5 years.**

RESPONSE: AEC agrees with 80% survivorship of woody vegetation after 5 years.

**Comment 4. Three and four cattle crossings are referenced in the application. Four cattle crossings are shown on the mitigation plan drawings. Which number of crossings is correct? These cattle crossings will consist of rock fords through the stream resulting in fill. Have impacts associated with this mitigation measure been figured into the 3,223 linear feet of proposed stream impact? Consider the use of hog slots instead of rock fords.**

RESPONSE: Four cattle crossings are included in the application, one of which is an existing culverted area of Bend Fork. The remaining crossings are ford crossings and while they will consist of cobble/gravel, they will be incorporated into the stream channel and design. These areas of the stream will still be considered jurisdictional channel. Please see response to Comment 5 below for additional information. Instead of hog slots, USDA approved cattle crossings, which do not frighten cattle, will be used.

**Comment 5. A new channel pattern and grade control structures are referenced in the mitigation plan. Have these impacts been figured into the 3,223 linear feet of proposed**



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**stream impact? All impacts to streams need to be accounted for regardless of whether the impact is directly associated with the coarse refuse disposal area or if the impact is as a result of mitigative measures.**

RESPONSE: As CEC discussed with you on the phone on July 31, 2013, any stream mitigation “impacts” were not included in the original application since these measures were seen as improvements rather than impacts. However, we understand that the USACE needs to account for disturbances within the ordinary high water mark of a jurisdictional stream. This is true even if those disturbances are associated with permanent improvements to the stream channel.

Given that, approximately 3,800 linear feet of the 4,800 linear feet of proposed stream mitigation will require some type of work within the ordinary high water mark of the channel. These improvements include streambank stabilization, installation of in-stream structures, bank grading, or excavation of a new channel. As previously stated, the additional 3,800 linear feet of disturbance was not included in the original 3,223 linear feet of impact. The remaining 1,000 linear feet of mitigation in Bend Fork does not involve work below the ordinary high water mark and thus are not included in these lengths. Please refer to the table below for the amended, approximate length of stream disturbance. As we discussed, these additional disturbances associated with mitigation will not require their own mitigation, since they are for the implementation of a mitigation effort.

<b>Proposed Permanent Stream Impacts Associated with the CRDA Expansion (Linear Feet)</b>	<b>Proposed Temporary Disturbances Associated with Stream Mitigation (Linear Feet)</b>	<b>Total Proposed Length of Stream Disturbance (Linear Feet)</b>
3,223	3,800	7,023

**Comment 6. The mitigation plan proposes riparian vegetative monitoring to include survival and height of planted woody species on 10% of the sub-sample. Please note that 80% survivorship of woody vegetation will be required for the entire areas planted with woody species.**

RESPONSE: AEC understands that the 80% survivorship relates to the entire planted approximately 9 acre riparian area. However, accurately finding and assessing ~3,600 individually planted woody stems is not realistic and has not been included in previously approved permits from the USACE. CEC has had good success in accurately assessing



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the overall survivorship of plantings by using sub-samples and plots as described in the mitigation plan. AEC agrees to a total woody stem count in the final year of monitoring.

**Comment 7. Perpetual protection is proposed for all mitigation areas. Please indicate whether the landowner(s) are in agreement with this. Perpetual protection will be expected to be submitted by the end of the year if a positive permit decision is reached. The landowner must be notified of the implications of a conservation instrument upfront.**

RESPONSE: The landowner, Mr. McFarland, has been notified of the implication of the conservation instrument and has verbally agreed to the mitigation plan. Assuming the positive permit decision is reached in a timely manner, the conservation instrument will be submitted following permit issuance.

**Comment 8. The planting table (Figure 4C) indicates that 200 trees per acre and 150 shrubs per acre are proposed to be planted in the mitigation area. Please increase the number of either of these vegetative communities by 50 stems to ensure at least 400 native woody stems per acre are planted.**

RESPONSE: Due to the OEPA requirement of 480 woody stems per acre, AEC will increase the number of woody stems by 130, bringing the total number planted up to 480 per acre.

#### **Response to the June 11, 2013 USEPA Comment Letter**

**Comment: Impacts with this project should be included in the proposed TOVCC 401/404 permit application to construct the No. 3 Impoundment.**

RESPONSE: The proposed impacts associated with the CRDA should NOT be included with the proposed impacts for the No. 3 Impoundment project with TOVCC. As the USACE knows, the No. 3 Impoundment and Century Mine CRDA projects are associated with two different companies, The Ohio Valley Coal Company (TOVCC) and AEC. While these companies share a fine refuse impoundment, their coarse refuse are disposed of independently of each other. TOVCC's No. 3 Impoundment project does not rely on the CRDA to be a viable project and should be reviewed on its own merit.

The need for the No. 3 Impoundment has also been questioned by the USEPA, as the viability of a separate initiative to raise the elevation of the existing No. 2 Impoundment is still in question; thus, the inclusion of the AEC CRDA with the questionable issuance of the No. 3 Impoundment permit would put the Century Mine operation at risk should a



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non-favorable decision be reached in the No. 3 Impoundment permit application process. The separation of the two projects is the only way for guaranteed continued operation at the Century Mine during the fine refuse decision process.

The existing No. 2 Impoundment has enough capacity to accommodate the slurry that will be generated from the Century Mine during the life of the proposed CRDA. Therefore, regardless of the decision on the raising of the No. 2 Impoundment or issuance of the permit for the No. 3 Impoundment, the coarse refuse generated from Century Mine will need to be disposed of in the area being proposed within this permit application.

The USACE Pittsburgh District has also set precedent in separating the permits for other large mines in western Pennsylvania which share refuse disposal. This precedent should continue on this similar project.

### **Public Concerns**

#### **Concern 1. Depreciation of property value**

RESPONSE: The size and layout of the existing mine property is not changing significantly due to this project, thus property values should not change due to this project.

#### **Concern 2. Air quality concerns from dust/black soot**

RESPONSE: AEC has and will continue to adhere to conditions of the existing mine permits relating to air quality.

#### **Concern 3. Site run-off and design**

RESPONSE: Site run-off, drainage, and sediment control ponds were addressed in the 401/404 application and are available upon a Freedom of Information Act (FOIA) request. AEC will continue to adhere to conditions of the existing mine permits relating to stormwater runoff from their facilities.

#### **Concern 4. Avoidance and alternatives**

RESPONSE: Avoidance measures and alternatives were addressed in the 401/404 permit application and available upon a FOIA request.



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**Concern 5. Impacts to livestock and drinking water**

RESPONSE: The area proposed for impact is not upstream of any livestock area and will be reclaimed as agricultural areas for cattle grazing, thus increasing the amount of land available for grazing. No impacts are expected to drinking water

**Concern 6. Proximity of mitigation to impacts**

RESPONSE: Biologists from AEC and CEC searched extensively for mitigation throughout the watershed. The location that was selected was chosen because 1) of its proximity to the impact site, 2) there was a landowner who was willing to have mitigation performed on his property, and 3) the landowner was willing to agree to perpetual preservation on the mitigation site.

**Concern 7. Closures to Routes 74 and 87**

RESPONSE: There will be no permanent road closures to any county or townships roads for this project. Per the discussion at the public meetings on Nov 3, 2011, Dec 1, 2011, Jan 16, 2012 and AEC's public road access permit, these roads could be closed periodically, but likely not for more than a few hours at a time.

**Concern 8. Noise levels**

RESPONSE: AEC has, and will continue to, adhere to conditions of the existing mine permits relating to noise.

**Concern 9. Loss of drinking water**

RESPONSE: The construction of this coarse refuse disposal area should have no hydrologic impact, thus will not cause a loss of drinking water.

**Concern 10. Traffic**

RESPONSE: Traffic activity should remain similar along Williamson Road and the only increase along Mayhugh Road will be crossing of mining equipment for the transport of coarse refuse.

**Concern 11. The size of the coarse refuse site.**



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RESPONSE: The coarse refuse site will be capped and reclaimed in accordance with the mining permit. The concern of aesthetic displeasure will be a temporary issue, as the project should only last approximately 18 months.

This letter provides responses to those issues and concerns provided in the USACE comment letter dated July 11, 2013. AEC feels that all of the issues have been adequately addressed.

If you have any questions or need additional information please do not hesitate to contact me at (412) 429-2324 or [rewing@cecinc.com](mailto:rewing@cecinc.com).

Very truly yours,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

A handwritten signature in dark ink, appearing to read 'Raymond A. Ewing', is positioned above the printed name.

Raymond A. Ewing  
Project Manager

A handwritten signature in dark ink, appearing to read 'Daniel A. Maltese', is positioned above the printed name.

Daniel A. Maltese  
Vice President, Ecological Services